



The Telecommunications Association

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July 24, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Re: CC Docket No. 96-98 (Access to right-of-way)

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, this is to notify you that today UTC submitted the attached written *ex parte* presentation to the Offices of Chairman Hundt and Commissioners Quello and Chong, as well as the Chief of the Cable Services Bureau, Meredith Jones, regarding the utility industry's position on the access to right-of-way portions of CC Docket No. 96-98.

The presentation summarized the points raised in the joint comments and reply comments of UTC and the Edison Electric Institute in this docket with regard to access to utility poles, ducts and conduits. The original and one copy of this notice are being filed for inclusion in this docket.

Should any questions arise concerning this notification, please communicate with the undersigned.

Cordially yours,

Sean A. Stokes
Senior Staff Attorney

cc: Chairman Hundt
Commissioner Quello
Commissioner Chong
Meredith Jones
Public Inspection File

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Ex Parte

**SUMMARY OF UTC AND EEI
POSITION ON ACCESS TO RIGHT-OF-WAY, CC DOCKET 96-98**

**I. FCC Must Take Care To Not Adopt Access Rules That Hinder The Provision
Of Safe and Reliable Electric Service**

While the primary context of the proceeding is local telephone competition, the regulations implementing section 224 will also apply to the poles, ducts, conduits and right-of-way owned by other utilities. As a result, the FCC must take particular care not to adopt rules that could impair reliable and safe utility service. In addition, the FCC must recognize that dramatic changes are taking place within the utility industry. In a competitive, performance based utility environment, electric utilities are unable to absorb the additional costs or operational and reliability impacts of attachments.

II. Non-Discriminatory Access (Section 224(f))

- Provision raises potential constitutional "takings" issue.
- Rules should prohibit only unreasonable discrimination, based on analysis of specific facts of each situation.
- Utility pole owners should not be subject to the same conditions of access as third-party attachées.
- Decisions must be based on facility-by-facility, case-by-case review.

III. FCC Should Avoid Efforts At Rigid Standardization

Poles/conduits are uniquely local in nature, with myriad fact patterns and potential attachment scenarios that defy rigid standardization. Therefore, the FCC should encourage individual negotiations rather than adopting rigid rules on terms and conditions for access.

- Congress explicitly recognized that utilities have valid reasons for denying access due to safety, capacity, reliability and generally applicable engineering principles.
- The FCC should not adopt a single national standard such, as the National Electric Safety Code (NESC), for determining the reasonability of access. The NESC is just one of many codes and safety standards that are followed by electric utilities:
 - Other applicable safety standards include the National Electrical Code, Occupational Safety and Health Administration (OSHA) requirements, state and local safety and facility regulations, and owner-specific standards which reflect design and operational practices, and local public activities.
- Rather than adopting a specific safety standard, the FCC should adopt guidelines for arbitrating whether access has been denied unreasonably.

IV. Notification Requirement (224(h))

The notification requirement of 224(h) is only intended to apply to situations where the facility owner makes an otherwise inaccessible facility accessible. It is intended to give attaching entities an opportunity to take advantage of the fact the utility is making difficult-to-access facilities accessible for modification. Accordingly, the requirement does not apply to situations where a facility is routinely accessible; e.g., a distribution pole along a residential street.

V. Unauthorized Attachments

The FCC should emphasize that attaching entities must initiate negotiations with pole owners and may not make attachments to, or modifications of, utility infrastructure absent an explicit agreement with the facility owner.